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New Jersey.

Preliminary report of the
Commission on Taxation

Trenton, N. J.

1891

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STATE OF NEW JERSEY.

PRELIMINARY REPORT

OF THE

COMMISSION ON TAXATION

MADE TO

GOVERNOR ABBETT,

AND ACCOMPANYING THE GOVERNOR'S MESSAGE.

— ♦ ♦ ♦ —

TRENTON, N. J.

NAAR, DAY & NAAR, PRINTERS.

1891.

PRELIMINARY REPORT OF THE COMMISSION ON TAXATION.

Preliminary report of the Commission on Taxation to Governor Abbott, confined to a consideration of the action taken by Commissioners, and the existing laws in other States, on the following subjects:

First. Of the method of taxing personal property, its valuation and assessment.

Second. Of deduction for debts.

Third. Of the establishment of a State Board for the purpose of revision, equalization and the enforcement of the collection of taxes.

We were appointed a Commission under Assembly Joint Resolution No. 1, of 1890, relative to the taxation of property, with instructions to take into consideration the taxation of property, and prepare and report to the next Legislature a bill for that purpose. Soon after the adjournment of the Legislature we commenced our labors, and held several meetings in the month of May, which have been continued from time to time up to the present. The first suggestions that occurred to us were:

First. The necessity of making ourselves familiar with what had been done in our sister States, nearly all of which we knew had been engaged for some time in considering the important questions submitted to us.

Second. In connection with the provisions of our own Constitution, it was manifestly necessary that we should be familiar with the constitutional constructions which had been made in our own State and our sister States, on provisions similar or analogous to our own.

Thirdly. It was deemed a matter of importance that we should familiarize ourselves with the evils existing in the present system, by consulting with those engaged in the administration of the law, and those whose attention had been directed to the subject in all parts of the State.

It was a preliminary necessity to ascertain accurately how much of the evils complained of arose from defect in the law itself, and how much from neglect or violation of its provisions. To accomplish these purposes we appointed William T. Hoffman and William F. Abbott as

counsel to the Commission. We elected Barker Gummiere president of the Commission, and instructed the counsel, under the direction of the president, to make the necessary examination of the laws, the reports of Commissions and the decisions of the courts, and prepare from such examination all the material that could be valuable to us in forming conclusions as to the best system to be adopted.

This work has been faithfully and industriously performed. The material collected is voluminous and very valuable. It is now being digested and will be presented at the proper time to the Legislature, in compliance with the joint resolution appointing the Commission. The Commission has also visited every county in the State of New Jersey, except the county of Union (which will be visited within a few days), for the purpose of hearing the views of the assessors, collectors and taxpayers of such counties and has carefully taken down suggestions made by them as to the working of the present system, and the evils which exist, both in the law and practice. We have also many valuable suggestions from gentlemen of the legal profession connected with the execution of the municipal and other tax laws of our State, all of which material will be collected and presented with their own views and suggestions by the Commission in their report.

The Commission has also, in connection with their counsel, waited upon the Governor at his request, and have presented to him the general conclusions on the subject so far as they have been reached. The following report is confined to three important and preliminary questions, and is made at this time at the request of the Governor.

It will be observed that the importance of these fundamental questions has been fully realized by other States, and that the evils which exist in New Jersey have been almost universal, and that the consideration given to them in other States has led to the passage of laws which are calculated in a very great measure to remedy existing evils.

The Tax Commission of West Virginia, in their preliminary report upon the subject of the difficulty of the work and the information it requires, says:

"Every thoughtful person will at once comprehend the magnitude, difficulty and importance of the work given to such a commission. If this work is successfully performed, the State will certainly receive a benefit equal to full twenty years of life and progress. But it is evident that this work requires a character of information not possessed by any man unless he has given these subjects special investigation and study. The character of the knowledge here demanded lies outside of experience and observation acquired in private employment. To deal intelligently with one class of questions presented a man must be acquainted with the legislation touching such questions in each of the other States, because it will not do for one State to have unusual and peculiar laws which may surprise and confuse strangers, while to deal with another class of questions intelligently he must understand the affairs of each county, because legislation exactly suited to one locality may be very unsuited to another locality.

On the question of taxation of personalty the New York State Assessors of 1881 say, in answer to the question: Who pays taxes on personalty? "The answer is to be found in the assessment rolls and is disgraceful to the commonwealth. Women, heirs, executors, guardians and trustees of persons of unsound mind are assessed beyond all measure of justice."

The Connecticut Commission in 1868 recommended that an officer be appointed to supervise the entire administration of the tax laws.

Massachusetts has an officer similar to the one recommended by the Connecticut Commission.

Upon the question of taxing personal property, a letter was written to the Commission of West Virginia by a gentleman in Vermont who had given the subject much attention, in which he said: "Prior to 1880 there was a widespread dissatisfaction in all parts of the State of Vermont, growing out of the inequalities of assessment and the practice of concealing intangible property. In 1880 a stringent assessment law was passed, and a special officer held responsible for its enforcement. This officer was required to prepare such interrogatories as might be necessary to obtain truthful lists. These lists cannot be inspected unless by an order of the court. When first proposed this law was very unpopular, but after three years experience ninety-nine per cent. of our people would vote against its repeal. The increase of taxable personal property in Vermont was more than three-fold in any one year, namely: 1880 it was \$15,000,000 in round numbers, and in 1881 it was 46,000,000 of dollars."

The State of Maine increased the assessment of personalty from \$15,000,000, in 1880, to \$49,000,000, in 1883, and no complaint has been made against the statute which made such an increase possible; nor is there any dissatisfaction in the States of Connecticut and Massachusetts, where this class of property is most thoroughly listed.

The Commission of West Virginia, in their preliminary report upon the question of the discovery of invisible or intangible property, say: "It is inaccurate to say that human ingenuity cannot devise a law that will discover invisible property. There is a way to accomplish almost everything, if we study and investigate sufficiently." This illustration is given: "A money lender holds a hundred good and solvent notes against his neighbors; they aggregate \$10,000. The statute of the State makes it his duty to report the value of these notes to the assessor, but he reports only \$500. It is said that this man will evade taxation, however stringent may be the law. But suppose a statute be enacted requiring all securities of this class to be annually exhibited to the assessor, who shall endorse on each note the words 'Listed for such a year,' and suppose the law forbids payment unless a note has been thus endorsed for every year that it has been running? If it be suggested that a citizen cannot conveniently exhibit his securities, then let the law provide that when a note is not produced the assessor shall give to the owner a memorandum describing the security and certifying that it was listed for the year in question, but unless such memorandum be

attached to the note, payment cannot be enforced. Now, rather than risk losing his remedy, the holder of the bond or note will cheerfully pay the trifling sum to be assessed as tax on this item of property, and he will the more cheerfully do so because he has an assurance that every other note in the State will also be listed."

In the question of appointing a special tax officer for the better administration of the tax laws, the Tax Commission of Connecticut in their report, says: "One of the obvious and peculiar defects of our system is that it has no central or supervisory head by which to secure any uniformity in the manner of efficiency of its administration. It rests solely on the interested action and determination of more than a hundred and sixty separate local boards of officers, all acting without concert, conference or any common control or supervision and all alike interested, as well as their constituents, by the strongest pecuniary inducements in the under-valuation and concealment of the taxable resources of their respective towns, in order to evade and reduce their respective State tax apportionments. It may safely be assumed that so long as individuals and communities are left to adjust for themselves and practically to determine the proportion of the public burden which they themselves shall bear, just so long will palpable and glaring inequalities prevail. And the only effectual remedy is to secure, if possible, a fair and uniform valuation of all taxable property by some mode of appraisal divested of the influence of self interest, personal or local. There certainly can be no reason why a very close approximation of the true, actual value of every class of property in the State cannot be obtained, if proper measures are adopted to secure it. We think it equally clear that it is the indispensable duty of the State, as a first requisite of a basis of equal taxation, to secure such true and actual valuation of taxable property. Without such a basis, no equitable or consistent superstructure can be framed or devised. While it is true that the more visible kinds of property are notoriously undervalued, it is equally true, also, that another class, the nature and character of which affords peculiar facilities for concealment, escapes to a very considerable extent the reach of the tax gatherer entirely. Locked up from public observation in the private coffers of its owners, the assessors have no knowledge of its existence in many cases, except from the disclosure of the owner himself. Some new rule is, therefore, obviously demanded, which shall aim to secure: First. A full disclosure of all taxable interests. Second. A common and impartial measure of valuation. And third. A uniform rate of taxation upon such valuations."

A bill reported by the Commission creates a central tax department, and provides for a tax commissioner, charged with the special duty of making public every failure to execute the law touching taxation; and of collecting all taxes due by corporations; and having, also, an advisory supervision over the entire administration of the tax laws, thus insuring uniformity of action among the various local tax officers and throughout the whole tax department. It provides a board of appeals

wherein all grievances may be speedily determined. It provides for the annual publication of the whole practical operation of the tax code, and once in five years a full exhibit of all taxable resources of the State.

On the same subject the Massachusetts Commission reports: "We recommend that the office of tax commissioner be made a separate department of State; that the head of the department be appointed by the Governor and council; that the tax commissioner so appointed shall annually select from the assessors of each city and town one member of each Board, who shall be responsible to him for the returns required by law, and to whom he may at any time apply for a report upon any special subject that he may deem important. They also recommend that the commissioner have power to make his appointment in favor of any member of the same Board, and that the expense for such extra services as may be required to be paid by the towns at the established rate for the payment of assessors."

The Commission of West Virginia on this subject says: "It is not considered judicious for the Commission to advance its own views as to what law should be enacted, until our judgment has been enlightened by the counsels of such of our fellow-citizens as are willing to aid us with their advice and suggestions."

"At present the assessors hurry through their work, without system and without any well-defined preconceived idea of how that work should be performed. Indeed, it is not putting the case too strong to say that, at present, the average assessor is often influenced by two considerations: First. To obtain a re-election; and second. To prevent his official duties from interfering with his private business. It has been suggested to prohibit the re-election of these officers, but we deem this inexpedient. If a man is disposed to be faithful, the longer he is in office the greater his experience, and the greater his experience the more efficient he becomes. It is the true policy of the State, as it is the true policy in private business, that when a good man is obtained to pay him well and employ him as long as he is faithful."

On the subject of deduction for debts the Commission of West Virginia reports as follows:

"But there is another objection to this law—it permits debts to be deducted from the value of credits and investments, although they cannot be deducted from the value of visible property, and the question arises whether it is dealing fairly with persons who are not in debt to allow other persons, who are in debt, to make this deduction. For example, A. holds the bond of a county for \$100, and he owes a note for \$100 (which note, perhaps, is not payable for several years); now, under our present law, A. is not assessed for his county bond (because the debt offsets the credit); on the other hand, B. owns a horse valued at \$100, and owes \$100 (perhaps for the price of this horse), yet B. cannot deduct the debt from the value of the horse. This is certainly unfair; a note or bond is as much property as a horse, and may be of equal value—not only so, but it is the invisible property which chiefly occupies our courts and occasions the expense of a judicial system;

hence, if the horse be taxed, the note should be taxed; if liabilities in the one case be deducted they should be deducted in the other.

But, he it observed, the practical operation of this law is the same as if the statute declared that "the owners of invisible property, who are in debt, shall enjoy an exemption from taxation which is not allowed to the owners of visible property who are equally in debt;" whereas, our Constitution is emphatic that "all property shall be taxed according to its value."

Hence, it is evident, we must either abolish all deductions or else our existing law must be so enlarged as to permit a taxpayer to offset all classes of property against his liabilities. "A tax law should not only, as nearly as possible, be just, but it should present to the common mind no appearance of injustice," and an enlightened public opinion will not tolerate a system under which "a man whose entire property is invested in notes and bonds is taxed only on the surplus above his debts, while the land-owner, though, perhaps, owing for all he owns, and worth nothing, therefore, must, notwithstanding, pay taxes on all in which he has nominal ownership."

The whole question, then, is narrowed down to this: In order to establish uniformity, we must either abolish all deductions or else debts must be set off against every species of property, including land. But it would be extremely unwise to enlarge the operation of our law permitting debts to be deducted, unless we first obtain a more effectual method to compel holders of notes and bonds to report their securities to the assessor, because to increase the amount of invisible property which now avoids taxation, is to increase the burden on that class of property which cannot escape the assessor. To illustrate: A's farm, worth \$10,000, is mortgaged to B. for \$4,000; if the debt is deducted, A. should be taxed on \$6,000 and B. on \$4,000; but if B. does not report his mortgage to the assessor the tax rate must be increased, and A., whose land cannot escape, will pay as much on \$6,000 as he now does on \$10,000—in other words, the land-owner is not relieved unless the mortgage be listed for taxation. But experience teaches that the practice of deducting debts opens a door through which the bulk of invisible property has heretofore made its escape, and, unless it is proposed to put the entire burden on land and other visible property, this door should not be enlarged until some method is adopted to insure a more perfect assessment of notes, bonds and stocks.

THE GENERAL SUBJECT OF DEDUCTING DEBTS.

It is conceded on all hands that a tax law should be so framed as to exact from each citizen a tax in proportion to his ability; but there has been much discussion as to what method will best determine the relative ability of different citizens. On one side it was contended that (owing to the imperfections of all human institutions) the only true method is to levy a tax on each piece of property according to its value and to collect that tax from whatever person happens to be the

owner, on a particular day of the year, of such piece of property. For example, a certain diamond worth \$1,000 must pay a tax of \$3, and this amount must be collected from the person who owns the jewel on the first day of January. It is the property which is taxed; the tax is laid on the diamond, not on the person. Hence, the circumstance that the owner is embarrassed with debt is no reason why this diamond should escape taxation. Not only so, but the amount of the tax is measured by the value of the property and this jewel must pay the same tax, whether owned by a poor man or by a rich man.

This method is just, simple and practicable; the assessors ascertain three facts only: First. Is the diamond property? Second. What is its value? Third. Who was the owner of it on the first day of January?

This is the system established by our Constitution when it declared, that all property shall be taxed according to its value; and practical men (as distinguished from theorists) will be very slow to depart from this system unless the way is made clear to inaugurate a better one. The principal so adopted, if enforced, must produce equality and the reason, and the only reason why persons are dissatisfied, is because the Legislature has not passed such laws as will put this principle into full operation.

On the other side it is said that a man who is in debt is less able to pay than a man who is not in debt, and therefore, the best way to determine the ability of a citizen is to ascertain what he should be worth if all his debts were paid. This theory is certainly correct, as an abstract proposition, but a very little consideration will show that it cannot be practiced with success.

It will be observed, that under this theory, a man would pay a tax, not on his property, but on the surplus that remains after his debts are deducted from his entire estate. That is to say, before a citizen could be assessed, the officer must settle up all his affairs, precisely as a Commissioner in Chancery settles up the estate of a dead man; and this must be done as regards each individual taxpayer. When it is remembered that it generally takes three lawyers six months to settle a dead man's estate; when it is remembered that one-half of the business in our courts arise out of administrations; when it is remembered that many men, very successful in business, and owning vast quantities of property, are often insolvent for six months at a time without knowing it, the difficulties that embarrass this theory become truly appalling.

But unless a way is first discovered to procure a truthful list of a man's property, it is idle to speculate whether his ability is best determined by the amount of his property or by the surplus above his debts, because (be it remembered) the surplus cannot be calculated until we obtain an honest inventory of his estate. Hence, it will be time enough to discuss the relative merits of these two methods after we have adopted a system which prevents property from avoiding assessment, and, as before remarked, if all property is taxed, everybody will be entirely satisfied with the method established by our Constitution.

SO-CALLED DOUBLE TAXATION.

Although these views are universally accepted, yet it is sometimes flippantly said that when A. sells his diamond and takes the note of B., if a tax be levied both on the diamond and on the note it is double taxation. But this is a mistake, the jewel is one piece of the property and the note is a different piece of the property, and each is taxed only once. One man pays a tax on the diamond and the other pays a tax on the note. Each pays the tax levied on his own piece of property. This can be made very plain:

First. A. has the note. If B. is solvent the note is as valuable as the diamond. It is property, it is protected by the government, it can be traded for other property, and it has every element and every characteristic that should induce it to contribute towards the expenses of the State.

Be it observed, the amount of visible property is increased every time a new credit is created. When a note is given the basis of taxation is augmented by the birth of a new item of invisible property, and the larger the basis of taxation, the less the tax rate.

And, again, nobody proposes to exempt this note from taxation. There are peculiar reasons why invisible property, above all other sorts of property, ought to contribute to the expenses of the government: it is this very class of property which especially demands constant protection from the laws. The note would be valueless were it not that at the court house door stands always open, and it would be a gross perversion of justice to compel the other classes of property to carry all of a burden, which burden is carried for the especial benefit of this note.

Hence A. cannot complain because a tax is levied on his property; it is evident he is taxed only once.

Second. Then examine the situation of B.: He pays the tax levied on the diamond. It is true he is embarrassed by debt, but the embarrassment is the same whether he owes the jeweler or a butcher. The diamond must not be exempted from taxation because it happens to be owned by a man who is in debt.

It may be true that B., since he is largely in debt, has less ability than his neighbor, but the only way to relieve him is to adopt the method of taxing the surplus that will be left after deducting all a man's debts from his entire estate.

But, be it always remembered, the tax is laid on the diamond, not on the person, and it is very evident that only one tax is collected from this jewel.

Hence B. cannot complain because a tax is laid on the diamond, he pays only one tax.

The truth is this idea of double taxation disappears when the mind grasps a conception of what is meant by the language, "all property shall be taxed;" it disappears when the mind grasps a conception of the fact that, under our system, a man's ability is determined by the

amount of his property. In fact, this idea of double taxation is an offspring of the theory that a man's ability may best be determined by the surplus above his debts, which theory, although perfectly correct as an abstract proposition, is utterly impracticable, and is entirely different from the theory adopted by our constitution, which lays a tax on the property and not on the person.

The New York State Assessors on this subject say:

"The entire abolition of the right to deduct debts from the value of personal property is a simple and obvious remedy for a great part of the evil. It has been recommended by the comptrollers and other financial officers, and no serious argument has ever been presented, except by theorists, who demand an entire abolition of the assessment of personal property and placing the whole tax on land." (This is from the report of 1883, page 6.)

The Hon. D. A. Wells made a report upon this subject to the New York Legislature, in which he says: "It is difficult to see how a system which proposes to tax all personal property uniformly can be made to work with any degree of success unless the right of privilege to offset or diminish valuation by indebtedness is strictly and explicitly forbidden. Inasmuch as it is this very right or privilege which furnishes the opportunity whereby personal property can most successfully evade taxation, nothing is more easy than to create debts for the purpose of diminishing valuation, which no investigation on the part of the assessors will suffice to prove fictitious, and yet of such a character that individuals of easy conscience will find no difficulty in making oath to their validity.

"It is customary with many in discussing these subjects to propose a renewed requirement of oaths, and an increase of their stringency as a remedy for the difficulties under consideration; but I am constrained to say that it is all but the unanimous opinion of officials who of late have had extensive experience in the administration of both the national and State revenue laws, that oaths, as a matter of restraint, or as a guarantee of truth in respect to official statements, have, in a great measure, ceased to be effectual, or, in other words, that perjury, direct or constructive, has become so common as to almost cease to occasion notice. In fact, there has come to be a feeling in the community that an oath in respect to matters in which the government is a party is a mere matter of form, of mechanical procedure, and that its violation, especially with a mental reservation and when the interest of other individuals is not specifically affected, does not, in itself, constitute a crime."

Upon the same subject the New Jersey Commission of 1868 says:

"The other principal matter to which the attention of the commissioners has been turned, and to which the communications they have received have been largely directed, is the general subject of deductions for debts.

"The present laws permit a deduction to be made from the value of the real and personal estate of each individual assessed for all debts

owing from such individual to creditors residing in the State. For debts owing to creditors out of the State no deductions are allowed. Except, therefore, as to indebtedness to non-resident creditors, the individual is taxed for his property, not on its amount, but on the difference between that amount and his debts—in other words, not upon the property he holds, but upon the sum he is worth. The property held by him may be extensive, complex and valuable, and yet, while secured and protected to the holder by the government of the State, he may pay nothing towards the expenses of the State in return for the protection received. Lands and goods situated in one part of the State may, in his way, be exclusively taxed in another; correctly speaking, they are not taxed at all, the taxes imposed in such cases being not on the land or tangible goods, but on the credits or claims belonging to the creditor in the place where he lives. The inequalities and inconveniences thus caused are the subject of very general dissatisfaction and complaint. By some it is urged that no deductions should be made but for debts due to creditors in the same township or city by others for debts due to creditors in the county; by nearly all it is strenuously urged that such deductions should be allowed only from personal estate. Upon the latter point the judgment of officials and others from whom communications have been received by the Commissioners, or with whom they have personally conferred, has been nearly unanimous.

"The workings of the present laws have caused a general conviction that their provisions should be changed, so far at least as to allow no deductions from lands, and to require them to be assessed to the holder with out reference to indebtedness or liens.

"On the other side, many who concur in the necessity of denying such deductions from lands, go further, and urge with more consistency of reasoning that the inequalities and inconveniences complained of can be corrected only by allowing no deductions at all—by assuming as the basis of taxation, in each individual case, the value of the property held, whether personal or real.

"Upon the best consideration they have been able to give, the Commissioners are of the opinion that the last mentioned principle is the true one, and have accordingly made it the principle of the accompanying bill.

"If deductions be allowed from one kind of property, they can discover no satisfactory reasons why they should not be equally allowed from another.

"If the man holding his farm, and earning by his labor a support for his family, be not allowed to lighten his taxes by deducting his debts from his taxable estate, why allow such deductions to the wealthy holders of notes, mortgages and bonds? The difficulties necessarily encountered in carrying out the principle on which the present laws are in this behalf based, form, in the judgment of the Commissioners, a weighty argument against the principle itself. It is found upon experience to be attended with so many and serious evils as to forbid its im-

partial application. The effort to alleviate these evils by restricting its application only to the holders of personal estate, is an admission of the unsoundness or impracticable nature of the principle, and will necessarily impose an increase and disproportionate burden of taxation on the agricultural and landed interest of the State.

"Personal property in New Jersey, as in all prosperous communities, consists largely of rights and credits, termed in the law incorporeal things. They are evidenced and secured by notes, bonds, mortgages, book accounts, certificates of stock and other contracts expressed or implied. They constitute a most important and considerable part of the wealth of the State. They are to their holders property of the most productive and available kind. More than all others, they occasion the litigation that occupies our courts, and bring into play the expensive machinery and agencies of the law. Why should the holder of this species of property enjoy immunities or be entitled to deductions not allowed to the holders of lands?

"But the principle on which the revised bill is in this respect framed, does not derive its support merely from the obvious and acknowledged difficulties of carrying into practice the principle on which the existing tax laws are formed. The principle of the bill has been adopted because believed to be in itself a sound and equitable one.

"Taxes on property are defined to be the tribute which that property owes to the State for the protection, security and consequent value it receives from the government of the State. The protection so received is commensurate with the property held, and not with the sum or balance the holder may be found to be worth. If the owner of land be indebted to his creditor for the value of the land, and this indebtedness be represented by note or bond, the land is one property and the note or bond another. Each is protected by the law, and each owes its tribute to the law. They are in no sense the same—different in their natures, their titles and the uses to which they may be put. Each may be sold and transferred by the holder without regard to the other, nor does the note necessarily represent or depend for its value on the land. It may be paid by other means and other property; by the industry, the labor, or the future services of the maker. For all other purposes the note and the land are regarded by the law, and are treated in fact as distinct and valuable things. Why should they not be treated as such in the laying of taxes? The credit is made, and the note, or bond, or mortgage, is given because the convenience and advantage, both, of buyer and seller, are thereby subserved. The buyer prefers the one property, and the seller the other. Taxing each property once is not double taxation. The same is true in the transfer or sale of other things, as well as land. In every case, when a sale is made upon credit, the credit is the property in the hands of the holder.

"These credits due from solvent debtors are to be included in the aggregate of each individual's taxable estate. The difficulty, if any exists, of deciding in each case what debtors are solvent, and what credits are good, is a difficulty that exists equally, whether deduction

be or be not allowed. The value of a credit is dependent not alone on the tangible things the debtor may own when the credit is made. It may be, and, in fact, usually is, dependent on his property of other descriptions, as well as on honesty, industry and skill. The wealth of a civilized community does not consist merely of what can be seen and touched.

"Prior to 1851 taxes were laid in New Jersey, with the exception of those upon polls, on things of the latter description—that is upon lands and certain ratable by law. With the increase of the public expenses it was conceded that they ought to be laid on a different basis—one comprehending all property alike. This was attempted to be done by the law of 1851. That law authorized deductions for debts within certain limits or between certain persons. The frequent changes since made in the law as to how and when deductions ought to be made, sufficiently evince that, so long as allowed to any extent, the law must be a constant subject of dispute and change, occasioning the evils not only of an erroneous system, but the perhaps greater evils of an unsettled and changeable one."

The Commissioners are aware how impracticable it is to carry out with exactness in actual affairs any theory or principle however sound in itself, and how difficult it is to devise any system of taxes which shall lay its burdens with entire equality and fairness; still more, that shall be admitted to do so on all whom its burdens are laid. They believe, however, that the plan proposed of taxing property according to its value in the hands of the holder, with no deductions for his debts, is more just and equal than any heretofore tried. They believe that the more carefully it is considered, the more clearly it will appear to be so. While there is, in fact, under this plan no taxing of the same property twice, the taxable property will be largely increased, the work of assessing simplified and lightened, and no encouragement offered to the creation of fictitious debts.

"Upon the same subject we give an extract from the report of the New York State Assessors as follows:

"The inconsistency of reduction for debts with the rule for assessing real estate is obvious. This inconsistency is one of the grounds on which the taxpayers are pressed with a sense of wrong and inequality. It destroys their confidence in the equity of the law, and thus prepares the way for every form of evasion and concealment. Debts are easily created for the purpose of obtaining exemption, and when so created by the purchase of property which is itself exempt, such as United States bonds, the whole of the debt, added to the whole of the property purchased becomes a claim for exemption, to be deducted from the aggregate of taxable property. For this there is no remedy as long as the reduction is allowed. On the other hand, the reasons urged against its abolition lose on examination their apparent force. It is true that he who borrows money to carry on a stock of goods is not the absolute owner of the capital, but only of the margin risked by himself. But the notion that the State is bound to track out the absolute ownership

of capital before it can call for its dues is one which cannot be carried into practice, nor even supported by theory. He who holds the property for its present use, who enjoys the protection of it by the community, is the one to whom the State must look for its taxes. It is an accepted law of political economy that such taxes equalize themselves in the end, that they are distributed by affecting the rate of interest and the prices of commodities, so that they fall at last on the actual owners or beneficiaries of the capital taxed. The whole history of taxation in New York has been an illustration of these laws. They tax real estate without deduction for debts, and tax the debt secured by it also. The tax on real estate has been the great success of our system, although that on mortgage debts has proved substantially a failure. They tax visible personal estate, but allow the deduction of debts while attempting to tax these debts also, but it must be confessed that on the whole this branch of taxation is a failure in both its applications. No demonstration could be more complete that if it is the purpose of the law that personal property shall bear its fair and equal share of the burden of taxation, the right to deduct debts must be withdrawn.

"The system of offsets has not met with success in Connecticut. The Commissioners who were appointed in 1867 quote, in their report, somewhat from the above extract from the report of the New Jersey Commission, and characterize their own system of offsets as not only pernicious in its operation, but also as unsound in its principle.

"The Vermont law, also, allows deductions from the lists of personal property of each person of the amount of all debts due from him over and above the sums due by him from solvent debtors, with a proviso that any person claiming a deduction on account of debts shall answer the interrogatories of the listers or assessors. It is a fact well-known that the people of the State are yearly becoming more dissatisfied with the operation of this system and are anxious to have adopted the only practicable system, namely, to assume as the basis of taxation the value of the property held."

It is not singular that the evils which have been discovered to exist in other States are almost identical with those complained of by the people of New Jersey. The omission to assess large portions of the personal property in the State, by reason of which the burden is increased upon real estate far beyond its proper proportion; the assessment of the same character of land used for the same purposes on different principles of valuation in different parts of the same county; the habitual valuation of property in some of the political divisions of the State at less than its true value, in violation of the constitutional provision as well as existing laws, thereby largely increasing the burden of those whose property is valued according to law; the want of proper means to oblige the assessors to use existing law to reach concealed property; and the want of power of supervision over the whole State by persons having no local interest, bound by their duty to equalize the burden, so that the constitutional provision requiring property to be assessed according to its true value may be practically

carried out, are some of the evils found to exist in a greater or less degree in every State in the union. These evils have increased enormously in the last few years, with the increase of personal and invisible property. Many of them have grown into customs by reason of the patience and tolerance with which they have been borne, until now it is seldom that the officers entrusted with the execution of the law pretend that an honest effort is made to reach all the property within their district, and to equalize the burden upon it. The general result at the present time is that that portion of the community which has been struggling against oppressive legislation in other directions, and has been, therefore, less able to bear its proportion of the burden, has been obliged unjustly to bear the weight of the load which should rest upon others. The evidence shows that in some cases farmers have, as they saw the value of their land gradually reduced by reason of unjust legislation and unjust taxation, urged the assessors to continue the over-valuation of their land, rather than have a record made of their depreciation in value.

The most embarrassing subject before the Commission is the deduction of debts. Property, by our Constitution, must be taxed according to its true value. The true value of a farm is the same whether the owner is obliged to borrow a part of the purchase money, or not; yet, if he is taxed on the full value of the farm without deducting a mortgage which he has placed upon it, he believes that he is paying more than his share of the tax. If the person who holds the mortgage lives out of the State, and there is no power to tax the debt secured by it within the State, a portion of the property of the State escapes taxation. If the holder of the mortgage lives within the State, it is claimed that this is double taxation. The best considered opinions, however, seem to be that is not double taxation, but rather an increase of property within the State, by the creation of invisible personal property, represented by the note or bond, which property is protected by the laws of the State, and the enforcement of the rights of which occupies the larger portion of the time of the courts, causing more expense to the people than any other species of property, and which should, therefore, bear its proportion of taxation. Under the operation of the present system, where invisible personal property is seldom reached, and where, by various devices, debts created temporarily for the special purpose of evading taxation are deducted, it would be better for the owner of the land to pay the whole tax on his property, without deducting his debt, than to have the rate of taxation increased by the failure to reach the property which thus evades taxation.

The Commission, therefore, believe that a system should be in operation which practically reaches all the property in the State, both real and personal, visible and invisible, before any exemption can wisely be made for debts; and, even after such a system is in operation, evidence should be required by law of the permanence and character of the debt, so as to prevent the creation of debts for the purpose of evading taxation. Debts of record could undoubtedly be safely deducted under a

system which practically taxes all property, without doing injustice to any portion of the community.

Boards of equalization in the various States differ in their character and constitution, but all seem to lack inherent power to remedy inequalities of assessment and valuation, and to correct the action of the local assessors. In some of the States this difficulty has been partially remedied by the appointment of a single tax officer, clothed with some of the requisite powers. But it will be perceived that no adequate central authority exists in our sister States to determine all questions of the assessment and valuation of property, and the collection of taxes thereon. No complete measure has been adopted for this purpose, although the necessity for it is universally acknowledged. It is manifest, therefore, that New Jersey can profit by the experience of the other States, and, by establishing a State Board, with the necessary authority, take a step in advance, which, beyond doubt, will result in equal and just taxation to the great advantage and satisfaction of the taxpayers.

We do not intend to anticipate the regular report of the Commission and the preparation of such bills as may be thought wise, upon further consideration, but in view of the testimony taken by this Commission in our own State, and the facts and arguments in the foregoing extracts from the reports in other States, it seems to be proper to say:

First. That in the opinion of the Commission it is either necessary to abandon altogether the attempt to tax invisible personal property or to resort to some more competent measure to obtain a proper listing and valuation of it than exist at present.

Second. That the Constitution of the State requires that invisible personal property shall be taxed, and, therefore, the Legislature has no right to permit its exemption by failure to legislate on the subject.

Third. That the experience of other States, as well as the judgment of those who have considered the subject in our own State, leave no doubt that a law can be passed which will properly tax all property in the State, and that without resorting to measures as severe as those which have been adopted in some of our sister States.

Fourth. That the establishment of a State Board, with authority to enforce the listing and valuation of property and the collection of taxes imposed thereon, with ample power of supervision, will, in itself, remedy a large portion of the practical evils complained of.

Fifth. That the deduction of debts is not a necessary element in a just system of taxation, because the Constitution requires that *all property* shall be taxed, and not that persons shall be taxed in proportion to the value of their estates with their debts deducted.

Sixth. That under the present system debts should not be deducted at all, because great injustice and fraud is the necessary result.

Seventh. That whether it is expedient under a system that reaches all property, invisible as well as tangible, to permit deduction for *bona fide* debts, or not, is a matter which the Commission has not yet fully considered.

Wherewith append brief extracts from the laws of the most important States on these subjects:

OF THE LISTING, VALUATION AND ASSESSMENT OF PERSONAL
PROPERTY.

CALIFORNIA.

By the California statutes all personal property is assessed and taxed. Merchants are required to state the goods they have on hand on the taxing date, and to such statement must be affixed in each case an oath that the statement is a true account of the subscriber's property.

The Board of Tax Commissioners of the State of California recommends that each person make an inventory of all his property, and make oath to the amount and value of it, and that if such statement be re-used, the taxpayer shall be proceeded against summarily.

The Commission also recommends:

First. That there should be a law to compel a statement.

Second. That criminal proceedings, with a penalty of a fine, should be enforced against the delinquent taxpayer.

Third. That the assessor who fails to exact a statement on oath shall also pay a penalty.

IOWA.

In the State of Iowa all personal property is taxed. A full itemized list is prepared and sent to the taxpayer; if he refuses to make the list as required, a penalty of \$100 is imposed, the proceeds to apply to the use of the schools. Oath must also be made to the statement, and if a false oath is taken a double assessment is made the penalty.

The assessor gives bonds. The penalty for not performing his duty with reference to the list and the oath is a fine of from twenty to one hundred dollars, with a judgment against his bondsmen.

NEBRASKA.

In the State of Nebraska all personal property is taxed, and the taxpayer is required to make a schedule of the numbers, amounts, quantity and quality of all personal property in his possession or under his control.

The assessor is to determine the value. An oath must be attached to the statement. The assessor has the power to further examine the taxpayer, under oath, with reference to the amount and value of his property. The penalty of taking a false oath is perjury.

COLORADO.

In the State of Colorado personal property is defined to include

everything which is subject to ownership, not included in the term real estate, and is taxed. All the personal property is to be listed by the owner, or the person who controls it, with or without notice, on a certain date. A full itemized list is printed and prepared and sent to the taxpayer, which he must return with his oath that it is a true statement attached. A penalty does not seem to be specified for a false oath, but we presume that the penalty is perjury.

NEVADA.

In the State of Nevada all property, of whatever kind or nature, not included in the term "real estate," is taxed. It is the duty of the assessor to demand from every person and firm, or the officer of every corporation or company, a statement under oath of all his or their personal property. The penalty for refusal to comply with the law is a misdemeanor, punishable with a fine on conviction of from ten dollars to five hundred dollars, or of imprisonment from ten days to three months, or both.

The assessor reports at the end of every month all persons neglecting or refusing to make such statement to the prosecutor of the pleas of the county, who is to prosecute the offender.

The statement of the taxpayer must be accompanied by his oath, and a false oath or a false statement is by law made perjury.

MINNESOTA.

In the State of Minnesota personal property is described in detail by law, and includes every conceivable form of that class of property. It is listed and assessed annually, with reference to its value, on the first day of May. The list is made out by the owner, or by the person having it under his control, and is delivered to the assessor, verified by the oath of the taxpayer.

The assessor assesses the value of the property after the list is returned.

The assessor is also authorized by law to examine the owner under oath; also, to examine any other person under oath whom he believes to have any knowledge of the value or amount of the property.

ILLINOIS.

In the State of Illinois the taxpayer must give to the assessor a schedule of the numbers, amounts and value of all the personal property in his possession or under his control. No oath is prescribed to be affixed to the statement. The penalty for neglecting or refusing to list his personal property according to law, or for making a false return, is a misdemeanor.

MAINE.

In the State of Maine every kind of personal property is liable to assessment and taxation. Notice is given by the assessor to the taxpayers to bring in a true and perfect list of their estates, both real and personal. If the list is not so brought in the assessor ascertains the nature and value of the estate not so returned, and the taxpayer is barred of his right to make any application for an abatement of his taxes.

The assessor may require the list to be verified, and he may also require the taxpayer to answer all inquiries in writing as to the character of his property liable to be taxed.

Payment is enforced by distress or by imprisonment.

The collector is liable for the tax unless he imprisons the delinquent wile in one year after the taxes are committed to him to collect, unless relieved by a vote of the town.

VERMONT.

All personal property in the State of Vermont is taxed. The State Board furnishes the assessors with a list containing full items of all kinds of property, exemptions claimed, and for what United States bonds, debts due by the taxpayer, and of the name and place of residence to whom due, and the amount due, on his oath.

The penalty for making a false oath is perjury, also another penalty is provided doubly taxing the property.

The assessor makes a stringent oath that he will assess all personal property belonging to persons in his taxing district, as far as it is possible, and at its true value. The penalty for false oath is perjury.

CONNECTICUT.

Upon notice given by the assessor, all persons liable to pay taxes must bring in written or printed lists specifying all the different kinds of their property, except that household furniture, libraries and tools may be set in the list in gross. These lists must be verified, and must also contain in the verification a statement that the taxpayer has not conveyed or temporarily disposed of any estate for the purpose of evading the taxes.

The penalty for neglect or refusal to comply with the law is that the assessor shall add ten per cent. upon his valuation. If the assessor accepts a list not sworn to he forfeits all compensation, and also \$50.

The reports from the State agree that there is no dissatisfaction existing, because this class of property is most thoroughly listed.

The owner of any share of the capital stock of any corporation who shall transfer such share to another, with the intent of evading the provisions of the law, shall forfeit to the town in which he resides one per cent. of the stock so transferred; a penalty of one per cent. is im-

posed for the giving of a fraudulent or untrue residence by any stockholder.

MASSACHUSETTS.

The law in Massachusetts imposes a tax on all personal property. The taxpayer must give to the assessor a true list of all his personal estate and subscribe an oath that it is a true list. The penalties for any evasion of the law are very severe. If any person, directly or indirectly, proposes or agrees to an assessment in any specific or limited amount less than he is liable to be taxed for he shall be punished by a fine not to exceed \$1,000, and the assessor is subject to the same penalty for making or assenting to such a proposition or agreement. Any act intending to escape taxation subjects the wrong-doer to double the amount of taxation, or if there be no tax paid, to a fine of from \$100 to \$5,000 on indictment. If the holders of any stock fraudulently transfer the same for the purpose of evading taxation, they forfeit one-half of the par value of the shares so transferred.

The penalty for making a false return of property is a fine not to exceed \$1,000 or imprisonment in jail not exceeding one year.

And it is said that with this exceedingly stringent law no dissatisfaction with reference to it is known in Massachusetts.

INDIANA.

Every person of full age and sound mind residing in the State, whether married or single, must list his, her or their tangible personal property subject to taxation which is situated within the county where he or she resides. He shall state whether he has other personal property within the State, describing the same particularly as possible, and the place wherein the same is situated, the name of the person who has possession, charge or control thereof, and the place of business of such agent.

The assessor shall immediately transmit to the county auditor of such county a memorandum of such tax, which shall be delivered by the auditor to the assessor of the proper township, who causes the same to be listed therein. The owner shall list in the township where he resides all his moneys, bonds or stocks, shares of stock of joint stock, or other corporations or companies (when the capital stock of such companies is not assessed elsewhere within the State), moneys loaned or invested, annuities, franchises, royalties, patent rights, all moneys deposited subject to his order, check or draft, and credits due from or owing by any person or persons, body corporate or politic to him or to her, without regard to the place where the said taxables may exist or be situated. He shall list all moneys and other personal property invested or loaned, or otherwise controlled by him as agent or attorney, or on account of any other person, company or corporation whatever.

A provision is made that if it shall be made to appear that any of

th s property is assessed as personal property out of the State, and that th s tax has been paid thereon, the auditor may release such property from taxation. Provision is also made for the listing of property held in trust, the personal property of corporations in the hands of receivers, th s capital stock of corporations and franchises, and the attempt is made, and it would appear from the items which are to be listed, successfully made, to secure the assessment of every conceivable kind of personal property.

On the first day of April in each year, or as soon thereafter as practicable, and before the first day of June, the assessor shall call upon each person required to be assessed and furnish him with proper blanks for the purpose, and thereupon such person shall make to such assessor a full and correct description of all the personal property held, assessed or controlled by him as executor, administrator, guardian, trustee, receiver, partner, agent, attorney, president or accounting officer of a corporation, consignee, pawn-broker, or in any representative or fiduciary capacity, and he shall fix what he deems the fair cash value thereof to each item of personal property for the guidance of the assessor, who shall determine and set the value of each item after an examination of such statement, and also an examination under oath of the party if he deems it necessary. Blanks for these statements are given to the taxpayer by the assessor. Any person or corporation giving a false or fraudulent list, schedule or statement, or willfully failing or refusing to deliver to the assessor a list of his taxable personal property required to be listed, or who shall temporarily convert any part of his personal property into property not taxable, with the fraudulent purpose of evading the payment of taxes thereon, shall be liable to a penalty of not less than \$50 nor more than \$5,000, to be recovered in an action in the name of the State on the relation of the prosecuting attorney. In case of refusal to make out and deliver to the assessor the statement required, or a refusal to subscribe any of the oaths required, the assessor must ascertain the number of all the articles of personal property and the value thereof, for which purpose he may examine under oath any person or persons whom he may suppose to have a knowledge thereof. And the county auditor may add to such valuation so returned by the assessor fifty per cent. of the value so returned. Any person refusing to give the evidence required by the assessor shall, upon conviction, be fined not more than \$500 nor less than \$10, or imprisoned in the county jail not exceeding six months.

OHIO.

Every person of full age and sound mind is required to list his personal property, all moneys in his possession, all moneys invested, loaned or otherwise controlled by him as agent of attorney, or on account of other persons, all moneys deposited subject to his order, check or draft, all credits due him, whether in or out of the county, all moneys loaned on pledge or mortgage.

The person required to list his property receives from the assessor a blank for that purpose, and within ten days must make out and deliver to the assessor a verified statement of all the personal property, moneys, credits, investments in bonds, stocks in joint stock companies, annuities, or otherwise in his possession or under his control, which he is required to list for taxation either as owner or holder, or as parent, husband, guardian, trustee, executor, administrator, receiver, accounting officer, agent, factor or otherwise. If any person refuses or neglects to deliver the statement, is it the duty of the assessor to ascertain his personal property and the value thereof. The assessor has authority to examine under oath any persons whom he may suppose to have knowledge thereof.

The County Board of Equalization has power to hear complaints and equalize the valuation of all real and personal property in the county, and has authority to administer oaths, examine witnesses as to their own or others property, moneys, credits and investments, or the value thereof, and order any such property to be placed on the duplicate which has not been listed, and to fix the value thereof, and to increase the valuation of such property as has in their judgment been listed at less than its true value. If any person refuses to appear when required so to do by the board, complaint is made to the judge of the county, who issues a subpoena for the appearance of such person, and if he fails to appear and testify, he is subject to a penalty for contempt. The board calls each assessor before it at least once a year, for the purpose of furnishing such information relative to the list returned, and pertinent to the matters coming before the board as he may have in his possession.

OF DEDUCTION FOR DEBTS.

California.—The Constitution provides for deduction from credits of debts due from *bona fide* residents of the State, except in cases of credits secured by mortgage or trust deeds.

Iowa.—Debts in good faith due are deducted from the amount of moneys and credits.

Nebraska.—From the gross amount of credits all *bona fide* debts are deducted.

Colorado.—*Bona fide* debts are deducted from credits.

Nevada.—From the solvent debts, due to the taxpayer, is taken his indebtedness of the same character.

Minnesota.—Deductions are made of the amount of all *bona fide* indebtedness, which must be deducted only from the amount of credits.

Illinois.—Deduction is made from the gross amount of credits of the amount of all *bona fide* debts, for a consideration received.

Indiana.—The taxpayer is entitled to deduct from the gross amount of credits the amount of all *bona fide* debts owing. But no acknowledgment of indebtedness not founded on the actual consideration believed when received to have been adequate, and no such acknowledgment

ment made for the purpose of being deducted, shall be considered a debt within the meaning of the law. So much only of any liability as surety for others shall be deducted as the person making out the statement believes he is legally and equitably bound and will be compelled to pay on account of the inability or insolvency of the principal debtor; and if there are other sureties who are able to contribute, then only so much shall be deducted as the surety in whose behalf the statement is made will be bound to contribute. No taxpayer is entitled to any deduction from the amount of any bonds, stocks, money loaned, or money at interest, or on account of premiums or policies, or on account of any unpaid subscriptions to any religious, literary, scientific or charitable institution or society, nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated.

In all cases where deductions are claimed from credits such deductions must be verified by the person claiming the same, which form a part of the statement of the person listed.

In the case of *Ogden v. Walker*, 50th Indiana, 460, it was decided that where personal property is converted into United States securities for the express purpose of avoiding taxation, the court of equity will not interfere to enjoin the collection of the tax assessed on such security.

Maine.—Debts due the person to be taxed more than they are owing.

Vermont.—The law provides that the statement of the taxpayer shall contain an interrogatory of the amount of stocks and other securities claimed to be exempt from taxation under the laws of the State or of the United States. It shall also contain a statement of the debts actually due from such taxpayer on the taxing date, and the amount of deduction claimed; and no deduction shall be made from the list of any person by reason of debts owing by him, unless such statement includes the name and place of residence of each person, to whom he is so indebted and the amount so owing by him; nor on account of his being an endorser for the surety of another. Nor shall any deduction be allowed on account of joint indebtedness, except to the amount he would be obliged to pay for all the persons jointly combined, were each to pay equal parts of the debt, and from any deduction allowed on account of debts there shall be deducted the amount of United States Government bonds and other non-taxable securities owned by the taxpayer claiming such deduction of debts due from solvent debtors.

Massachusetts.—The statute provides for the listing of money at interest and other debts due the person to be taxed more than they are indebted or pay interest for, but not including in such debts due, or indebtedness, any loan or mortgage on real estate, taxable as real estate, except the excess of such loan above the assessed value of the mortgaged real estate.

BOARDS OF EQUALIZATION.

The laws of the great majority of States give power only to the local

assessors to assess upon and equalize taxes between the property of individuals with appeal to township committees and to the Superior, Circuit and Common Pleas Courts.

The county boards equalize taxes as between towns and townships.

State boards are differently constituted in the various States. In some they are composed of the Governor and his council, in others of members elected from each congressional district or one person elected by each county, or persons nominated by the Governor.

The duties of the State Boards are limited to the equalization of values between the counties.

All of which is respectfully submitted.

BARKER GUMMERE, *Chairman*,
MOSES K. EVERITT,
JOHN J. GARDNER,
FOSTER M. VOORHEES,
FREDERICK C. MARSH,
JOHN P. STOCKTON.

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END OF
TITLE